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Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Concluding observations on the initial report of the European Union

Addendum

Information received from the European Union on follow-up to the concluding observations*

[Date received: 13 January 2017]

* The present document is being issued without formal editing.

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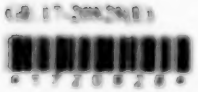

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Introduction

1. On 2 October 2015, the UN Committee on the Rights of Persons with Disabilities adopted its concluding observations on the initial report of the European Union on the implementation of the UN Convention on the Rights of Persons with Disabilities (UNCRPD). The Committee requested the European Union to submit within 12 months and in accordance with article 35(2) of the UNCRPD information in writing on the measures taken to implement the Committee's recommendations regarding:

- The EU declaration of competence (paragraph 17);
- The proposal for a European Accessibility Act (paragraph 29); and
- The monitoring framework (paragraph 77).

2. This document describes the measures taken in response to this request.

3. In addition, the Commission will soon adopt its progress report on the implementation of the European Disability Strategy 2010-2020[1], which will also take into account the remaining concluding observations.

I. Recommendation on the EU declaration of competence

4. **Paragraph 17:** "*The Committee recommends that the European Union regularly update the declaration of competence and its list of instruments to include recently adopted instrument and instruments that may not specifically refer to persons with disabilities but that are relevant to persons with disabilities*".

5. As indicated in annex II to the Council Decision concerning the conclusion by the EU of the UN Convention on the Rights of Persons with Disabilities[2], the scope and the exercise of EU competences are, by their nature, subject to continuous development. Consequently, the list included in the appendix to that annex illustrated, at the time, the extent of the area of competences of the EU in accordance with the relevant Treaties. Indeed the situation has evolved and several of those legal acts have been revised and some repealed. In addition, some new legal acts that have been adopted include disability-related matters which would appear to be relevant to certain provisions of the UNCRPD.

6. It therefore appears necessary to establish a comprehensive and up-to-date overview of EU legal acts referring to matters governed by the UN Convention. This overview will be published as an annex to the above mentioned progress report on the European Disability Strategy 2010-2020 and will be publicly available.

7. The list, which will contain references to over 130 EU legal acts, will show an increasing number of EU legislative acts that relate to matters governed by the UNCRPD. It will be an up-to-date source of information about the EU legal instruments in this field.

II. Recommendation on the proposal for a European Accessibility Act

8. **Paragraph 29:** "*The Committee recommends that the European Union take efficient measures towards the prompt adoption of an amended European Accessibility Act that is aligned to the Convention, as developed in the Committee's general comment No. 2 (2014) on accessibility, including effective and accessible enforcement and complaint mechanisms. The Committee also recommends that the European Union ensure the participation of*

[1] COM (2010) 636 — European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52010DC0636.

[2] Council Decision of 26 November 2009 (2010/48/EC): http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010D0048.

persons with disabilities, through their representative organizations, in the adoption process".

9. On 2 December 2015, the European Commission adopted a proposal for a Directive on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services, the so-called European Accessibility Act[3]. The proposed Directive complements other existing EU and national law on accessibility. It requires compliance of a selection of products and services, which relate to those included in article 9 of the UNCRPD, with a harmonised set of functional accessibility requirements.

10. In line with the General comment No. 2, the proposed Directive contains clear deadlines for implementation, uses standards for providing detailed requirements and contains an effective and accessible enforcement and complaint mechanism. This enforcement mechanism is initially based on self-declaration of compliance by economic operators. The enforcement also includes active checks of market surveillance authorities. The proposed Directive requires Member States to ensure adequate and effective means to ensure compliance with the proposed Directive, including the possibility for persons with disabilities, as consumers, to take action under national law before the courts or before the competent administrative bodies. In addition, the means shall include provisions whereby public bodies or private associations, organisations or other legal entities which have a legitimate interest, might take such action on behalf of consumers.

11. The adoption of the proposal requires agreement between the Council and the European Parliament as co-legislators, in accordance with the provisions of the Treaty on the Functioning of the European Union[4]. Both the Council and the European Parliament started their work on the proposed Act, supported by the Commission.

III. Recommendation on the monitoring framework

12. **Paragraph 77:** "*The Committee recommends that the European Union take measures to decouple the roles of the European Commission in the implementation and monitoring of the Convention, by removing it from the independent monitoring framework, so as to ensure full compliance with the Paris Principles, and ensure that the framework has adequate resources to perform its functions. The Committee also recommends that the European Union consider the establishment of an inter-institutional coordination mechanism and the designation of focal points in each European Union institution, agency and body*".

13. Immediately after receiving the concluding observations, the European Commission ceased its participation in the EU monitoring framework meetings. In parallel, it undertook a careful and detailed legal analysis for defining the adequate process to be followed for formalising its withdrawal. The formal process requires the adoption of the note revising the EU monitoring framework by the Council of the European Union. This document is currently being discussed in the Council and is expected to be adopted in January or February 2017.

14. The proposed revised EU monitoring framework will have the same remaining members with the same tasks. The composition of the EU monitoring framework will then be:

- The European Parliament;
- The European Ombudsman;
- The EU Agency for Fundamental Rights (FRA); and
- The European Disability Forum (EDF), the main EU-level umbrella organisation of people with disabilities.

[3] COM (2015) 615, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2015:0615:FIN.

[4] Article 294 TFEU describes the ordinary legislative procedure, applicable to this proposed Directive's legal basis — Article 114 TFEU.

15. The European Commission, being no longer part of the EU monitoring framework, will continue with its tasks as focal point for the EU, *i.e.*:

- Promotion — encourage mutual learning, exchange of good practices, providing support to disability NGOs, raising awareness about the UNCRPD etc.;
- Protection — deal with citizens' complaints, monitor Member States compliance with the UNCRPD when implementing EU law, start infringement procedures in case of non-compliance with areas of EU competences, etc.; and
- Monitoring — data collection, statistics, monitor how Member States apply EU legislation falling under the scope of the UNCRPD, i.e. Commission reports on the application of directives and regulations.

16. It is important to note that the EU framework's mandate covers areas of EU competence. It is a complement to the national frameworks and independent mechanisms which bear the main responsibility for the promotion, protection and monitoring of the UNCPRD in the Member States.

17. The EU monitoring framework will continue to cover two different mandates:

- First, the tasks must be carried out in those areas where the Member States have transferred competences to the EU (mainly EU legislation and policy[1]). This will be the main area of the framework's actions.
- Second, the tasks must be carried out with respect to the "internal" implementation of the UNCRPD by EU institutions, that is to say vis-à-vis the Union's public administration, for example in relation to their employees as well as in their interaction with citizens and the public.

18. The Commission's assessment is that there are no financial implications associated to this revised proposal of the EU monitoring framework. Members will continue to carry out their respective tasks in the context of their activities and budgets. The accessible website of the EU monitoring framework contains information about their functioning, members, activities and meetings. It also includes contact details.

19. As a review of the framework and/or its working methods may be initiated whenever judged necessary, other issues might be addressed, if needed, once the withdrawal of the European Commission is formalised.

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[1] As illustrated in the EU declaration of competences annexed to Council Decision 2010/48.